



Town of Brookline

Massachusetts

BOARD OF APPEALS
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Harry Miller, Co-Chair
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Patrick J. Ward, Secretary

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. BOA 070055

Petitioner, Brookline Development Corp., applied to the Building Commissioner for permission to construct additions to multiple structures, to convert two separate carriage barns into single family residences and to establish driveways and parking spaces at 63, 65 and 67 Harvard Avenue per plans. The application was denied and an appeal was taken to this Board.

On September 13, 2007, the Board met and determined that the properties affected were those shown on a schedule in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals and fixed November 1, 2007 at 7:15 p.m. in the Main Library, Hunneman Hall, as the time and place of a hearing. Notice of the hearing was mailed to the Petitioner, to his attorney (if any of record), to the owners of the properties deemed by the Board to be affected as they appeared on the most recent local tax list, to the Planning Board and to all others required by law. Notice of the hearing was published October 11, 2007 and October 18, 2007, in the Brookline Tab, a newspaper published in Brookline. Copy of said notice is as follows:

NOTICE OF HEARING

Pursuant to M.G.L. C. 39, sections 23A & 23B, the Board of Appeals will conduct a public hearing to discuss the following case:

Petitioner: **BROOKLINE DEVELOPMENT CORP.**

Location of Premises: **63, 65 & 67 HARVARD AVE BRKL**

Date of Hearing: **11/01/2007**

Time of Hearing: **7:15 p.m.**

Place of Hearing: **Main Library, Hunneman Hall 2nd Floor**

A public hearing will be held for a variance and/or special permit from

1. **5.04.2; Residential Buildings on Rear of Lot; Special Permit Required.**
2. **5.14; Lot Frontage; Variance Required.**
3. **5.43; Exceptions to Yard and Setback Regulations; Special Permit Required.**
4. **5.50; Front Yard Requirements; Variance Required.**
5. **5.51; Projections into Front Yards; Variance Required.**
6. **5.55; Front Yard for Rear Lot; Variance Required.**
7. **5.60; Side Yard Requirements; Variance Required.**
8. **5.61; Projections into Side Yards; Variance Required.**
9. **5.62; Fences and Terraces in Side Yards; Variance Required.**
10. **5.70; Rear yard Requirements; Variance Required.**
11. **5.71; Projections into Rear Yards; Variance Required.**
12. **5.74; Fences and Terraces in Rear Yards; Variance Required.**
13. **For the Design of All Off-Street Parking Facilities:**
 - 6.04.2.d; Variance Required.**
 - 6.04.3; Special Permit Required.**
 - 6.04.4.b; Variance Required.**
 - 6.04.5.b; Variance Required.**
 - 6.04.5.e; Special Permit Required.**
 - 6.04.12; Special Permit Required.**
14. **8.02.2; Alteration or Extension; Special Permit Required.**

Of the Zoning By-Law to construct additions to multiple structures and to convert two separate carriage barns into single family residences and to establish driveways and parking spaces per plans

at **67 HARVARD AVE BRKL**

Said Premise located in an M-1.0 district.

The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in programs and services of the Town of Brookline are invited to make their needs known

to the ADA Coordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2330; TDD (617) 730-2327.

Hearings, once opened, may be continued by the Chair to a date and time certain. No further notice will be mailed to abutters or advertised in the TAB. Questions regarding whether a hearing has been continued, or the date and time of any hearing may be directed to the Zoning Administrator at 617-734-2134 or check meeting calendar at: <http://calendars.town.brookline.ma.us/MasterTownCalendar/?FormID=158>.

**Diane R. Gordon
Harry Miller
Bailey Silbert**

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Chair, Enid Starr, and Board members, Bailey Silbert and Jesse Geller. The petitioner was represented at the hearing by Attorney Jeffrey P. Allen of Seegel, Lipshutz & Wilchins, P.C., 20 William Street, Suite 130, Wellesley, MA.

At the hearing, Lara Curtis, Planner, distributed the Planning Board Report dated October 18, 2007. Mr. Allen then described the factual background for the petition as follows:

63-67 Harvard Avenue is currently a rectangular-shaped lot of nearly 15,000 square feet on Harvard Avenue midway between Park Street and Harvard Street. On the lot is a two-and-a-half story single-family dwelling and a detached two-story carriage barn.

The petitioner's proposal also involves 71 Harvard Avenue, the lot immediately to the west of the subject property. 71 Harvard Avenue is currently a rectangular-shaped lot with 19,334 square feet with a three-story mansard-style two-family dwelling and a detached two-story carriage barn. Both properties are located in the Harvard Avenue Local Historic District. The surrounding dwellings represent a range of dwelling types, including single-, two-, and three-family dwellings, as well as multi-family buildings.

The petitioner, Brookline Development Corp., proposes to re-align the lot lines so that the carriage barn currently located on the lot at 71 Harvard Avenue is combined with the lot at 63 Harvard Avenue,

convert the two carriage barns into single-family dwellings, and convert the main dwelling into three units, resulting in a total of five dwelling units on the lot. The subdivision of 71 Harvard Avenue and the expansion of a parking area is described in detail in Case No. 70056.

The proposal can be divided into four key parts: (i) alterations to the main structure and its conversion into a three-family dwelling; (ii) alterations to the carriage barn immediately to the rear of the main building (referred to herein as "Carriage Barn A" and as "Unit D" on the plans) and its conversion into a single-family dwelling; (iii) alterations to the acquired carriage barn currently on 71 Harvard Avenue (referred to herein as "Carriage Barn B" and as "Unit E" on the plans) and its conversion into a single-family dwelling; and (iv) the new parking facilities being installed to serve the structures.

The primary alteration to the main structure consists of the removal of the dwelling's rear ell addition and the construction of a large rear addition in its place. The addition would be approximately 73 feet deep and of varying width. The addition narrows in two places to provide for one two-car garage and one pair of single-car garages accessed by the main driveway. The existing dwelling structure would be occupied by one unit, and the addition would provide floor area for two more units, with entryways located on the side facade between the garages. The addition varies in height from two to three stories tall, and a roof deck would be located above the second story at the rear. The total square footage of the entire building would be 8,527 square feet: 4,224 square feet for the existing house; 2,060 square feet for one unit; and 2,243 square feet for the other unit.

Carriage Barn A (marked "Unit D" on the site plan) is a two-story gabled structure located immediately to the rear of the main dwelling. The main alteration would be its conversion into a single-family dwelling and a new two-story addition with a hip roof. The carriage barn would continue to be oriented towards the side driveway, so the 12.5-foot-wide by 21.3-foot-long addition would appear to be a

rear addition and would not be especially visible from the street. The addition's exterior would be finished to match the existing building. A single-car garage would be integrated into the existing structure to the left of the existing barn entrance door, which would provide the primary access. The total square footage for Carriage Barn A would be 2,223 square feet.

Carriage Barn B (marked "Unit E" on the site plan) is part of the land acquisition from the lot at 71 Harvard Avenue. The barn has a slate mansard roof and is currently located to the rear of the existing parking area on 71 Harvard Avenue and directly in front of Auburn Place, a private way that intersects with Auburn Street and dead ends at the subject property's rear lot line. Under this proposal, the carriage barn would continue to be oriented away from Auburn Place facing the parking area on 71 Harvard Avenue, and a significant rear single-story addition would be constructed. The addition would have a flat roof and wrap around the existing barn, extending from the side wall approximately 17.5 feet and toward the rear lot line 37.8 feet. The rest of the existing structure would remain intact, except for a new entry door on the front and a new patio door at the rear. The total square footage for Carriage Barn B would be 2,144 square feet.

The **parking facilities** for this proposal make use of the existing driveway that runs along 63 Harvard Avenue's side lot line. Four garage parking spaces are provided in the main dwelling's new addition. Tandem spaces are provided behind these garage spaces. The main addition's narrow width in these garage areas and a second floor overhang are intended to partially screen the view of vehicles from the street. In Carriage Barn A, a single-car garage space and a tandem space immediately behind it would provide two spaces for those residents. On 71 Harvard Avenue, a parking area currently exists along its side lot line. This parking area would remain, and two of the total seven spaces would actually be a part of the land acquisition and transferred to the same lot as 63 Harvard Avenue. These two spaces would be

dedicated to the residents of Carriage Barn B, but vehicular access to the spaces would continue to be through 71 Harvard Avenue via an easement.

Mr. Allen reviewed the zoning relief necessary for the proposed building:

Section 5.04.2 - Residential Building on Rear of a Lot: The Board of Appeals may modify the yard dimensions between two residential buildings on one lot by special permit.

Section 5.14 - Lot Frontage: This lot is not being subdivided under this proposal. Under Section 5.04.1, a residential building located on the rear of a lot that has another main building must have access to the street as specified in Section 5.14, which requires at least a 20-foot-wide access strip in M districts. The right side yard, where access to Carriage Barn A would be provided, is a minimum width of 18.9 feet; in addition, the main house is required to have a 21-foot side yard setback, so the access strip for the carriage barn does not meet the minimum requirements.

Section 5.50 - Front Yard Requirements

Section 5.51 - Projections into Front Yards

Section 5.55 - Front Yard for Rear Lot: The required front yard setback for a dwelling located on a rear lot is the rear yard setback.

Section 5.60 - Side Yard Requirements

Section 5.61 - Projections into Side Yards

Section 5.62 - Fences and Terraces in Side Yards: The patios shown on the plans are at ground level and are expected to have fences less than six feet high, so this section does not apply.

Section 5.70 - Rear Yard Requirements

Section 5.71 - Projections into Rear Yards

Section 5.74 - Fences and Terraces in Rear Yards: The patios shown on the plans are at ground level and are expected to have fences less than six feet high, so this section does not apply.

Buildings	Required	Existing	Proposed	Finding
Three-family Dwelling				
Front Yard Setback	15 feet	21.9 feet	21.9 feet	Complies
Side Yard (right) Setback	21 feet (10 + L/10)	18.9 feet	18.9 feet	<u>Variance / Special Permit*</u>
Side Yard (left) Setback	21 feet (10 + L/10)	7.7 feet	8.4 feet	<u>Variance / Special Permit*</u>
Carriage Barn A				
Front Yard Setback	30 feet (60 feet between buildings)	53 feet (estimate)	12.8 feet	<u>Variance / Special Permit**</u>
Side Yard Setback (right)	7.5 feet	24.6 feet	28.3 feet	<u>Complies</u>
Side Yard Setback (left)	7.5 feet	2.7 feet	2.7 feet	<u>Variance / Special Permit*</u>

Rear Yard Setback	30 feet	2.4 feet	2.4 feet	<u>Variance / Special Permit*</u>
Carriage Barn B				
Front Yard Setback	30 feet (60 feet between buildings)	n/a† (estimate)	10 feet	<u>Variance / Special Permit**</u>
Side Yard Setback (right)	10 feet	2.6 feet†	70 feet (estimate)	<u>Complies</u>
Side Yard Setback (left)	10 feet	80 feet†	8.5 feet	<u>Variance / Special Permit*</u>
Rear Yard Setback	30 feet	35.6 feet	11.4 feet	<u>Variance / Special Permit*</u>
Entire Proposal				
Floor Area Ratio	1.0 20,640 s.f.	.26 3,952 s.f.	.625 12,894 s.f.	<u>Complies</u>
Landscaped Open Space	1,289 s.f.	n/a	3,618 s.f.	<u>Complies</u>
Usable Open Space	2,579	n/a	4,702 s.f.	<u>Complies</u>

* Under Section 5.43, the Board of Appeals may waive yard and setback requirements if the applicant provides a counterbalancing amenity. In this case, preservation of the carriage barns and restoration of the balustrade along the front of the main dwelling will serve as the amenity.

** Under Section 5.04, the Board of Appeals may modify the yard dimensions between two residential buildings on one lot where it is demonstrated that there will result light, air, sunlight, and other amenities of a standard no lower than would result from such requirements.

† The lot lines for the lot are being significantly altered with this proposal and the corresponding subdivision proposal for 71 Harvard Avenue, so existing setbacks and floor area are determined based on the pre-existing lot configuration.

Section 6.04 – Design of All Off-Street Parking Facilities

- .2.d – minimum aisle width for two-way traffic.
- .3 – tandem spaces; Special Permit required.
- .4.b – entrance and exit drive width.
- .5.b – driveway and parking lot setback.
- .5.e – common driveway; Special Permit required.

Parking	Required	Existing	Proposed	Relief
Parking Spaces	11.5 spaces	n/a	12	<u>Complies</u>
Aisle Width	20 feet	n/a	16 feet (est.)	<u>Variance / Special Permit</u> ‡
Entrance/Exit Drive Width	20 feet	10 feet (est.)	10 feet (est.)	<u>Variance / Special Permit</u> ‡
Driveway Side Yard Setback	5 feet	3 feet	3 feet	<u>Variance / Special Permit</u> ‡
Parking Area Setback	5 feet	n/a	0 feet	<u>Variance / Special Permit</u> ‡

‡ Under Section 6.04.12, where new parking facilities are being installed to serve existing structures and land uses, the Board of Appeals may by special permit substitute other dimensional requirements provided such substitution is necessary to permit the installation of some or all of the off-street parking spaces that would be required for a similar new building.

Section 8.02.2 - Alteration or Extension: Special permit required.

In support of the requested special permits, Mr. Allen stated that the proposed project, in conjunction with the related project at 71 Harvard Avenue, will result in a reduced overall density than that which could be developed for the lots, while at the same time, the combined projects will serve to preserve the carriage barns and improve the landscaping for the lots. Considerable effort was made by the petitioner to address the concerns of the neighbors and the Preservation Commission.

The Chairperson inquired if any members of the public wished to be heard. Numerous members of the public expressed their strong support for the project. No members of the public expressed opposition to the project.

Lara Curtis, on behalf of the Planning Board, gave the following report:

The Planning Board is supportive of this proposal to make various additions to multiple structures and convert the carriage barns to residential use for a total of five dwelling units on the lot. The applicant has worked extensively with the Preservation Commission and with the local residents to come up with a design that is satisfactory to most parties involved. The applicant first applied to the Preservation Commission in May 2007 to redevelop the property, and the plans currently before the Board of Appeals are a result of several meetings with the Commission and the neighborhood. For example, there is no access to the property from Auburn Place, as the residents along that private way objected strongly to any proposal that used the private way for vehicular access. The additions to the carriage barns have been designed to ensure the front facades remain largely intact and relatively unchanged. The large addition to the main dwelling has an articulated facade and is graduated to partially shield the view of vehicles from the street.

Though the application requires a significant number of special permits, the proposal largely makes use of existing buildings and their current placements on the property. The proposal is complicated, but this is chiefly because of the applicant's attempt to retain existing structures and their primary facades while expanding them to provide sufficient floor area. The additions to the carriage barns will be screened by either other existing structures on the lot or by significant vegetation. The large main addition meets its side yard setback where it is close to a multi-unit apartment building, and on the other side where it needs zoning relief, the parking area provides a significant buffer for the existing dwelling. The proposal's total square footage is considerably below the limits of the allowed FAR, and the number of units is well within its minimum lot size requirements. Ample usable and landscaped open space will be provided on the lot. The proposal provides the required number of parking spaces, and though the design of the parking areas requires relief, the parking spaces are not grouped into one single lot, presenting a more attractive view from the street and minimizing conflicts between vehicles.

Although the Planning Board is in favor of the proposal's overall design, the Board feels the design of the single-story addition to the carriage barn behind 71 Harvard Avenue could be improved. The flat roofline of the addition detracts from the existing structure's appearance, and alternative designs should be considered, possibly incorporating a balustrade along the roofline. Otherwise, the Board feels the overall proposal takes into consideration neighboring buildings and possible impacts from the lot's redevelopment. Therefore, the Planning Board recommends approval of the proposal and the submitted plans, including those titled "63-71 Harvard Ave., Brookline, MA," prepared by O'Sullivan Architects and last dated August 30, 2007, and August 14, 2007, and the site plan prepared by James Abely and last dated August 23, 2007, subject to the following conditions:

- 1. Prior to issuance of a building permit, a final site plan, indicating parking area materials, drainage details and utilities, and the easement on 71 Harvard Avenue, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.**

2. **Prior to issuance of a building permit, a final landscaping plan, indicating planting types and locations and fencing materials, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.**
3. **Prior to issuance of a building permit, final elevations of all buildings shall be submitted to the Preservation Commission and the Planning Board for review and approval.**
4. **Prior to issuance of a building permit, an ANR plan indicating the subdivision of 71 Harvard Avenue and the transfer of a portion of the rear of the lot to 63 Harvard Avenue, as reflected in the site plan prepared by James Abely and last dated August 23, 2007, shall be submitted to the Planning Board for review. This plan shall also indicate any easements that exist on either lot.**
5. **Prior to the issuance of a building permit, a construction management plan, including parking locations for construction vehicles, location of port-a-potties, and a rodent control plan, shall be submitted for review and approval by the Transportation Director and Health Director, with a copy of the approved plan submitted to the Planning Department.**
6. **Prior to the issuance of a building permit, the applicant shall submit to the Zoning Administrator for review and approval for conformance to the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered engineer or land surveyor; 2) final building elevations stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.**

Frank Hitchcock, Senior Building Inspector, spoke on behalf of the Building Commissioner. He restated the various sections of the Zoning By-Law under which relief is needed. The Building Department has no objections to the proposal, the relief required or to the conditions recommended by the Planning Board. The Building Department will ensure that all State Code provisions are satisfied.

The Board having deliberated on this matter, considered the foregoing testimony and concluded that it is desirable to grant all the relief requested by this petitioners, subject to certain conditions.

The Board considered the visual relationships of site, the proposed alterations, and the proposed new parking, to the use, scale, and architecture of the surrounding community. The Board has considered whether the proposal creates harmonious visual relationships and the Board has determined that the relationship is, in general, harmonious. The Board further finds that the proposal to construct additions to multiple structures and to convert two separate carriage barns into single family residences and to establish

driveways and parking spaces, will not be more detrimental to the neighborhood than the existing conditions. The use as proposed to be developed and the site design are aesthetically pleasing. The proposed design is adequate and appropriate for the neighborhood. The proposed development will not have any substantial effect on the traffic, nor will it cause a nuisance or serious hazard to vehicles or pedestrians. The Board finds that the proposed use will not remove any existing low or moderate-income housing in the Town.

The Board made the following findings pursuant to Sections 5.09 and 9.5:

1. The location, topography, vicinity and natural features of the site make it particularly suitable for the proposed development on the lot.
2. The use as proposed by the petitioners will not adversely affect the neighborhood.
3. There will be no nuisance or serious hazard to vehicles or pedestrians.
4. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
5. The proposed development on the lot will not have a significant adverse affect on the supply of housing available for low and moderate income people.

Accordingly, the Board grants special permits pursuant to Sections 5.04.2, 5.43, 6.04.12 and 8.02.2 to construct additions to multiple structures and to convert two separate carriage barns into single family residences and to establish driveways and parking spaces per plans titled renovate and convert the existing carriage barn into a separate single-family dwelling on the lot per plans titled "63-71 Harvard Ave., Brookline, MA," prepared by O'Sullivan Architects and last dated August 30, 2007, and August 14, 2007, and the site plan prepared by James Abely and last dated August 23, 2007, subject to the following conditions:

- Unanimous
The Board
Filing Date

Filing Date: December 11, 2007

A True Copy:

ATTEST


Enid Starr